

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL REVISION APPLICATION No. 721 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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PATELDAHYABHAIAMBALAL - Applicant(s)

Versus

STATEOFGUJARAT - Respondent(s)

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Appearance :

MR MJ BUDDHBHATTI for Applicant(s) : 1,
 MR. H.M.PRACHHAK, APP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 12/09/2005

ORAL JUDGMENT

1.By filing instant petition under Section 397 read with Section 401 of the Code of Criminal Procedure ('the Code' for short), the petitioner seeks to challenge the order dated 18.8.2005 recorded below application exhs.

59 to 61 and exh.68 by the learned Special Judge ACB, Fast Track Court No.3, Bharuch, by which the application filed by the present petitioner as well as other accused, praying to transfer the case for trial before the competent Court, i.e. Chief Judicial Magistrate, came to be rejected.

- 2.The petitioner is the member of of the Directors of Amod Cooperative Cotton and Cotton Seeds Society. It is alleged against him that he has committed breach and misappropriation of Rs.3,55,00,000/- by selling goods hypothecated to Bank. Therefore, an FIR was lodged by Ambalal Narottamdas Patel on 20.5.2004, before Amod Police Station as Crime Register No. I-36/2004. The accused were arrested and they were chargesheeted before Special Court where the case is registered as Special Case No. 11 of 2004 before the learned Additional Sessions Judge, Fast Track Court No.3, Bharuch. According to the petitioner, there is no sanction obtained or granted by the sanctioning authority against the present petitioner and therefore Special Judge is barred from taking cognizance of offence under Prevention of Corruption Act and rest of the offences are triable by Judicial Magistrate First Class and therefore the petitioner along with other accused fled application praying to transfer the trial of the case in the Court of learned Chief Judicial Magistrate, Bharuch. The said application came to be rejected, which has given rise to the present petition.
- 3.Having heard Mr. M.J.Bhuddhbhhati, learned advocate of the petitioner and Mr. H.M.Pachhak, learned APP for the respondent State and on perusal of the impugned order, it is true that against Dayabhai Ambalal Patel, who is

the principal offender, sanction is accorded to prosecute for commission of the offence punishable under Section 13(1)(c) of the Prevention of Corruption Act and the present accused is one of accomplice, can be tried for commission of the offence punishable under Sections 420, 464, 409, 465, 467, 407 and 120(B) of the IPC by the learned Special Judge. Therefore, his trial cannot be separated by sending the trial to the learned Judicial Magistrate.

4. In aforesaid view of the matter, there is no illegality or infirmity committed by the learned trial Court in passing the impugned order requiring interference of this Court in exercise of powers conferred under Section 397 read with Section 401 of the Code.
5. Seen in the above context, petition lacks merit and deserves to be rejected.
6. For the foregoing reasons, the petition fails and accordingly it is rejected. Rule is discharged.

(A.M.Kapadia, J)

Jayanti*